

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

EQUAL OPPORTUNITY
EMPLOYMENT COMMISSION,

Plaintiff,

MARTIN BARRERA,

Plaintiff-Intervenor,

v.

ROY FARMS, INC.,

Defendant.

NO: 12-CV-3117-TOR

PROTECTIVE ORDER

BEFORE THE COURT is a Stipulated Protective Order (ECF No. 29),
which the parties have petitioned the Court to enter. Pursuant to the parties'
stipulation, **IT IS HEREBY ORDERED:**

1. **Scope and Purpose of this Protective Order.** This Protective Order
shall govern the designation and handling of protected information or materials
produced by any party or non-party during this litigation, whether by voluntary

1 production or disclosure or in response to any formal discovery procedure,
2 including designation and handling of nonpublic information of a confidential
3 nature. This Protective Order does not affect any party's obligations under the
4 Federal Rules of Civil Procedure to produce documents as required by the rules of
5 discovery or an order of the Court. The purpose of this Protective Order is to
6 facilitate the handling of nonpublic information of a confidential or proprietary
7 nature.

8 1.1. If a designating party files a "Confidential" document (defined below)
9 in court and does not attempt to file it under seal, or if a document is otherwise
10 already part of the public record as of the entry of this Order, the document(s) in
11 question will not be subject to this protective order. The mere filing of the
12 "Confidential" document by the non-designating party does not remove the
13 document from the protection of this order. Although it is anticipated that the
14 parties filing documents will comply with the terms of this Protective Order, if a
15 non-designating party files a document marked "Confidential" by the non-filing
16 party, the non-filing party may seek appropriate relief from the Court to ensure
17 protection under this order.

18 2. **Confidential Information or Material.** A Producing Party shall
19 have the right to designate documents and information it produces as
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1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” pursuant to this Order and
2 materials designated as such will be referred to as “Designated Materials.”

3 2.1 CONFIDENTIAL. Materials marked “CONFIDENTIAL” shall be those
4 materials including any document, file, portion of file, transcribed testimony
5 or other material that the designating party in good faith reasonably believes
6 contain non-public information of a competitively sensitive, proprietary,
7 financial, or trade secret nature , or to involve privacy interests such as:

8 a. Personnel records pertaining to any current or former employee of
9 Defendant Roy Farms, Inc. (hereafter, “Defendant”) that contain personal,
10 payroll or financial information. Good cause exists to protect the privacy
11 rights of Defendant’s current and former employees. These files include
12 these individuals’ personal identifying information and financial account
13 information. No public interest is served by requiring public disclosure of an
14 individual’s private and personal information in a matter in which he or she
15 is not a party. The Court’s June 1, 2002, General Order regarding
16 “Electronic Availability of Case File Information” specifically contemplates
17 the protection of such personal information.

18 b. Medical records and healthcare information pertaining to any
19 individual. Good cause exists to protect the highly sensitive and private
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1 nature of medical records. No public interest is served by making sensitive
2 and private medical records publicly available.

3 2.2 HIGHLY CONFIDENTIAL- ATTORNEYS EYES ONLY.

4 Materials marked “HIGHLY CONFIDENTIAL” shall be those materials,
5 including any document, file, portion of file, transcribed testimony or other
6 material that the designating party in good faith reasonably believes (1) to
7 comprise non-public information of a competitively sensitive, proprietary,
8 financial, or trade secret nature, or to involve privacy interests and (2) that
9 disclosure of such information to opposing parties or other persons may be
10 detrimental.

11 3. **Designating Protected Documents.** A Producing Party shall
12 designate information and/or records as “CONFIDENTIAL” or “HIGHLY
13 CONFIDENTIAL” by marking the applicable designation thereon in a size and
14 location which makes the designation readily apparent. These documents, referred
15 to hereinafter as “protected documents,” will be covered by this Protective Order
16 and will be used only for the purposes of this case, and will not be used by any
17 party or his or her counsel for any purpose unrelated to this case.

18 3.1. **Marking Protected Documents:** Protected documents, excluding
19 transcripts from depositions or other court proceedings, shall be designated as
20 confidential by conspicuously affixing the word “CONFIDENTIAL” or

1 “HIGHLY CONFIDENTIAL” to each page containing confidential information. If
2 only a portion, or portions, of the protected document qualifies for protection, the
3 designating party also must clearly identify the protected portion(s) (*e.g.*, making
4 appropriate notions in the margins).

5 **3.2. Designating Deposition Testimony or Testimony Given During**
6 **Other Court Proceedings:** Testimony given during a deposition, hearing, or other
7 proceeding may be designated as “Confidential” pursuant to Paragraph 2 of this
8 Protective Order. The parties, however, must designate such testimony as
9 “Confidential” on the record at the deposition, hearing, or other proceeding. When
10 confidential information is designated on the record at a deposition, the party
11 claiming that the testimony is confidential shall make arrangements with the court
12 reporter taking and transcribing such proceeding to label each page containing the
13 testimony with the designation “Confidential” and to bind separately such pages as
14 “Confidential.” Any party may, within fifteen (15) days after receiving a
15 deposition transcript, designate portions of the transcript, or exhibits thereto, as
16 “Confidential.” The transcript will remain confidential during this 15-day period.
17 Unless designated as confidential or highly confidential, any confidentiality will be
18 waived after the 15-day designation period expires.

19 **3.3. Inadvertent Failure to Designate:** If a party discovers that, through
20 inadvertence, documents containing “Confidential” or “Highly Confidential”

1 information or materials have been provided to the opposing party without being
2 properly designated under this Protective Order, the producing party shall promptly
3 notify the receiving party in writing of the error. The notification shall identify the
4 documents or information (*e.g.*, by Bates Stamp number or some other specific
5 form of identification), and the receiving party shall affix a stamp identifying each
6 document or item of information so identified as “CONFIDENTIAL” unless the
7 parties agree that some other procedure for remedying the inadvertence is more
8 appropriate under the circumstances. If timely corrected, an inadvertent failure to
9 designate confidential information or materials does not, standing alone, waive the
10 designating party’s right to claim protection under this Protective Order for such
11 information or materials.

12 **4. Maintaining Designated Protected Documents:** Any protected
13 document must be maintained in a manner reasonably calculated to preserve its
14 confidentiality.

15 **5. Disclosure of Confidential Information or Materials**

16 **5.1.** Except as set forth herein or by any subsequent court order, no
17 confidential or highly confidential information or materials may be delivered,
18 exhibited, or disclosed to any persons unless done in a manner in compliance with
19 this Protective Order.
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1 5.2. The parties' counsel shall require all persons, except those referred to
2 in paragraph 5.3 and its subparts, before being given access to any protected
3 document, to read and agree to be bound by this Protective Order by endorsing the
4 certification attached as Exhibit A. Counsel shall retain this certification.

5 5.3. Confidential information or materials may be delivered, exhibited, or
6 disclosed to the following persons subject to the limitations of this Protective
7 Order:

8 5.3.a. Counsel representing the named parties in this case and any
9 paralegal, clerical, or other employee of such counsel
10 assisting in the prosecution or defense of this litigation;

11 5.3.b. Any copying services hired by counsel to copy documents in
12 bulk;

13 5.3.c. The Court or any court personnel;

14 5.3.d. Any person testifying during a deposition, hearing or trial, to
15 whom disclosure is reasonably necessary;

16 5.3.e. Any person identified as having authored or having
17 previously received the protected document(s);

18 5.3.f. The parties and their client representatives, insurance
19 carriers, and/or counsel for their insurance carriers for any
20 purpose in this litigation, unless the parties agree that a

1 particular document or material produced is for Attorney's
2 Eyes Only and is so designated;

3 5.3.g. Current or former employees or agents whose review a party
4 deems necessary to the presentation or defense of claims in
5 this litigation, unless the parties agree that a particular
6 document or material produced is for Attorney's Eyes Only
7 and is so designated;

8 5.3.h. A Mediator(s) retained by the parties;

9 5.3.i. Consulting experts, consultants, or expert witnesses or
10 employees of such experts and consultants whose review a
11 party deems necessary to the presentation or defense of
12 claims in this litigation;

13 5.3.j. The author of the document and anyone shown on the
14 document as having received it in the ordinary course of
15 business;

16 5.3.k. Court reporters and persons preparing transcripts of
17 depositions;

18 5.3.l. The Court, Court personnel, and jurors or venire members;
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1 5.3.m. Any other person only upon order of the Court or upon
2 stipulation of the Producing Party in writing or on the record
3 of a deposition, hearing, or trial.

4 5.4. Highly Confidential information shall be used by the Receiving Party
5 solely for the purposes of this litigation and may be disclosed only to the following
6 persons:

7 5.4.a. counsel for the respective parties, and employees and
8 independent contractors for counsel that are engaged in work
9 necessary to assist in this litigation;

10 5.4.b. third-party experts or consultants, and the employees of such
11 expert and consultants who are assisting them, engaged by
12 counsel or a party to assist in this litigation who have signed
13 a written acknowledgement, in the form attached;

14 5.4.c. the author of the document and anyone shown on the
15 document as having received it in the regular course of
16 business;

17 5.4.d. employees of the Producing Party;

18 5.4.e. Court reporters and persons preparing transcripts of
19 depositions;

20 5.4.f. the Court, Court personnel, and jurors or venire members;

1 5.4.g. any designated arbitrator or mediator who is assigned to hear
2 this matter or who has been selected by the parties and his or
3 her staff ;

4 5.4.h. Any other person only upon order of the Court or upon
5 stipulation of the Producing Party in writing or on the record
6 of a deposition, hearing, or trial.

7 5.5. The persons described in Paragraphs 5.3 and 5.4 shall have access to
8 Designated Materials once they have been made aware of the provisions of this
9 Order and have manifested their assent to be bound thereby by signing a copy of
10 the annexed ACKNOWLEDGEMENT. Such persons are enjoined from disclosing
11 Designated Material to any person except in conformance with this Order. This
12 Order does not require disclosure of expert other than as required by the Federal
13 Rules of Civil Procedure.

14 **5.6. Filing Confidential Information or Materials.** Before filing any
15 document designated as Confidential under this Protective Order or referencing
16 such material in court filings, the filing party shall first confer with the designating
17 party to determine whether the designating party will remove the “Confidential”
18 designation, whether the document can be redacted pursuant to the Administrative
19 Procedures for Electronic Case Filing in Civil Cases (ECF Version 5.0) for the
20 United States District Court for the Eastern District of Washington and Federal

1 Rule of Civil Procedure 5.2, or whether a motion to seal or stipulation and
2 proposed order is warranted. If counsel cannot reach an agreement, then a properly
3 noted motion to seal must be filed *before or contemporaneously* with the sealed
4 document. If the party wishing to submit the material is not the party designating
5 the material as confidential, the party wishing to submit the material shall provide
6 at least five (5) days notice to the other parties, so that a motion to seal, if
7 necessary, may be prepared and filed *before or at the same time* the material is to
8 be submitted under seal to the Court. If a motion to seal is filed but not ruled on
9 prior to the filing or use of the designated materials, the designated materials must
10 be filed “CONDITIONALLY UNDER SEAL” pending a ruling on the motion to
11 seal.

12 5.6.a. Counsel shall use the Case Management and Electronic
13 Document Filing (“CM/ECF”) system to present materials
14 under seal; counsel shall not provide original sealed materials
15 to chambers and shall not provide working copies to
16 chambers unless the materials are voluminous and working
17 copies would otherwise be required under Local Rule 5.1. In
18 association with any stipulation or motion to seal filed by the
19 designating party, the designating party shall bring to the
20 Court's attention the requested disposition of the confidential

1 documents in the event the stipulation or motion is denied.
2 For example, the designating party may request that, in the
3 event the stipulation or motion is denied, the documents
4 containing confidential information be deleted from the
5 docket rather than merely unsealed, together with leave to
6 file a new motion or other paper that does not rely on the
7 confidential material. Nothing in this Protective Order or the
8 above example shall be construed as an endorsement of any
9 particular relief, nor shall it otherwise constrain the Court's
10 authority with respect to the handling of confidential
11 documents or information.

12 5.6.b. The parties shall meet and confer before the Pretrial
13 Conference to attempt to reach an agreement about the
14 confidentiality of information to be used at trial and a method
15 for maintaining the confidentiality of such information. At
16 the Pretrial Conference, the parties may present, by motion or
17 stipulation, a proposed method for maintaining
18 confidentiality. Nothing in this paragraph, however, shall be
19 construed as constraining the Court's authority to treat trial
20 exhibits and testimony as matters of public record.

1 **6. Designating Party's Use of Protected Documents:** Nothing in this
2 Protective Order limits a designating party's use of its own documents or
3 documents obtained through means other than discovery requests or subpoenas in
4 this litigation. Such disclosures shall not affect any confidential designation made
5 under the terms of this Protective Order.

6 **7. Disputes About Confidentiality Designation**

7 **7.1. Meet and Confer Requirement:** The parties agree to designate
8 information as "Confidential" on a good faith basis and not to impede the receiving
9 party's access to and use of information relevant to the lawsuit. If any party
10 believes that a document, tangible item or other information that has been
11 designated as "Confidential" is not entitled to be treated as "Confidential," the
12 party will notify the designating party of its objection to the "Confidential"
13 designation. The parties shall meet and confer in an attempt to reach an agreement
14 regarding the confidential status of the document, tangible item or information
15 within five (5) business days after the objecting party has advised the designating
16 party of its objection.

17 **7.2. Motion for Protective Order:** If the objection is not resolved, and if
18 the objecting party notifies the designating party in writing of its intent to disclose
19 the information as well as the person and/or entity to whom it intends to make such
20 disclosure, then the designating party shall have five (5) business days after receipt

1 of such written notification to file a motion to have the document or information
2 treated as “Confidential;” if such motion is not timely filed, then the objecting
3 party may, for purposes of this case only, make the indicated disclosure.

4 **7.3. Status Pending Resolution of Dispute:** Any disputed document or
5 other material must be treated as a protected document under this Protective Order
6 until entry of a court order ruling otherwise.

7 **8. Inadvertent Production of Privileged or Otherwise Protected**
8 **Material:** When a producing party gives notice to receiving parties that certain
9 inadvertently produced material is subject to a claim of privilege or other
10 protection, the obligations of the receiving parties are those set forth in Federal
11 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
12 whatever procedure may be established in an e-discovery order or agreement that
13 provides for production without prior privilege review. Parties shall confer on an
14 appropriate non-waiver order under Fed. R. Evid. 502.

15 **9. Non-Termination and Return of Documents:** Within 60 days after
16 the termination of this action, including all appeals, each receiving party must
17 return all confidential material to the producing party, including all copies,
18 extracts, and summaries thereof. Alternatively, the parties may agree upon
19 appropriate methods of destruction.
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1 9.1. Notwithstanding this provision, counsel are entitled to retain one
2 archival copy of all documents filed with the court, trial, deposition, and hearing
3 transcripts, correspondence, deposition and trial exhibits, expert reports, attorney
4 work product, and consultant and expert work product, even if such materials
5 contain confidential material.

6 9.2. Notwithstanding the foregoing, nothing in this Order shall be
7 interpreted as limiting or overriding the EEOC's obligation to maintain copies of
8 files pursuant to the Federal Records Act or other applicable federal law.

9 10. **Rights of Parties:** This Protective Order is without prejudice to the
10 right of any party to apply to the Court for any further protective order relating to
11 any confidential information or for an order permitting disclosure of any
12 confidential information beyond the terms of this Protective Order.

13 11. **Jurisdiction:** The Court retains jurisdiction to make any
14 amendments, modifications, or additions to this protective order as it deems
15 appropriate, either *sua sponte* or upon motion.

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1 **IT IS SO ORDERED.**

2 The District Court Executive is hereby directed to enter this Order and
3 provide copies to counsel.

4 **DATED** November 13, 2013.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge

EXHIBIT A

I, _____, declare under penalty of perjury that I have read and understand the Stipulated Protective Order issued in United States District Court for the Eastern District of Washington in the case titled *EEOC et al. v. Roy Farms, Inc.*, , CV 12-3117-TOR. I agree to comply with and be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I further understand that any protected document and any notes, memoranda or other form of information derived from it, may not be used, copied or disclosed by me to anyone else except in strict accordance with the Stipulated Protective Order and then only for the prosecution and defense of this litigation.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____